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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/774,123

02/06/2004

Peter W. Swart

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01/24/2007

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EXAMINER

FETSUGA, ROBERT M

ART UNIT

PAPER NUMBER

3751

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

01/24/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

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Office Action Summary	Application No. 10/774,123	Applicant(s) SWART ET AL.	
	Examiner Robert M. Fetsuga	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1-12, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brunelle, Castellote and applicants' acknowledged prior art.

The Brunelle '851 (Brunelle) reference discloses an air bath comprising: a basin 11 including bottom 12 and side walls 13,14,14'; a plurality of air jets 15,15'; an air manifold 18; a

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blower 20 including a controller 21'; and conduit 21.

Therefore, Brunelle teaches all claimed elements except for the specific number/orientation of jets/rows.

Brunelle discloses at least one row of jets extending around a basin to ensure full body air treatment. See Fig. 2 and column 2, lines 47-55, for example. Therefore, the choice of jet arrangement (number/orientation of jets/rows, etc.) would appear an obvious choice to be made in effecting the desired body treatment. This obvious design choice is taught by Castellote at paragraphs 0002, 0040 and 0056, for example. Furthermore, applicant's acknowledge at paragraph 0006 of the instant specification that rows of air jets in basin side walls exist in the prior art. Lastly, the vertically spaced rows of air jets taught in the applied prior art would be capable of functioning in the manner recited in claim 1, in the same sense as with applicants' air jets.

Applicant's argue at pages 5-6 of the response filed December 08, 2006 the provision of vertically spaced rows of air jets is not taught by the applied prior art. The examiner can not agree as noted supra. Further in this regard, it is implicit in applicants' argument that the applied prior art only teaches one skilled in the air bath art to provide a single row of air jets. However, this reasoning is inconsistent with at

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least the Brunelle disclosure. Here, Brunelle teaches at column 4, lines 12-31, that an air bath desirably massages "all parts of the body". Limiting the air bath disclosed by Brunelle to a single row of air jets would preclude this result.

3. Claims 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brunelle, Castellote and applicants' acknowledged prior art as applied to claim 1 above, and further in view of Nicollet.

Although the air channels (18) of the Brunelle air bath do not include zones, as claimed, attention is directed to the Nicollet reference which discloses an analogous air bath which further includes air channels 31 that are zoned (col. 3 lns. 1-11). Therefore, in consideration of Nicollet, it would have been obvious to one of ordinary skill in the air bath art to associate zones with the Brunelle air channels in order to facilitate body treatment.

Applicant's have not separately argued the substance of these claims.

4. Applicant is referred to MPEP 714.02 and 608.01(o) in responding to this Office action.

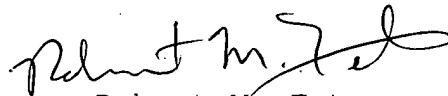
5. The grounds of rejection have been reconsidered in light of applicant's arguments, but are still deemed to be proper.

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THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 571/272-4886 who can be most easily reached Monday through Thursday. The Office central fax number is 571/273-8300.



Robert M. Fetsuga
Primary Examiner
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